

REPRESENTATIVE FOR PETITIONERS:

Henry L. Antonini, Attorney

REPRESENTATIVE FOR RESPONDENT:

Michael West, Vigo County Reassessment Supervisor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BASS ENTERPRISES, LLC & VCA, LLC,)	Petition No.:	84-008-15-1-5-00940-16
)		
Petitioners,)	Parcel No.:	84-07-21-400-025.000-008
)		
v.)	County:	Vigo
)		
VIGO COUNTY ASSESSOR,)	Township:	Lost Creek
)		
Respondent.)	Assessment Year:	2015

Appeal from the Final Determination of the
Vigo County Property Tax Assessment Board of Appeals

August 15, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Did the Petitioners prove the 2015 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2015 appeal with the Vigo County Assessor on October 2, 2015. On March 22, 2016, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioners. On April 14, 2016, the Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On May 17, 2017, the Board's administrative law judge, Patti Kindler (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Attorney Henry L. Antonini appeared for the Petitioners. Vigo County Reassessment Supervisor Michael West appeared for the Respondent and was sworn. Anthony Avenatti, "part owner" of the property, was sworn as a witness for the Petitioners.
5. The Petitioners submitted the following exhibits:

Petitioners Exhibit 1:	Certified appraisal of the subject property prepared by John Adamson with an effective date of March 1, 2015.
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6. The Respondent did not submit any exhibits.
7. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Hearing notice dated April 4, 2017,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for Mr. Antonini.
8. The property under appeal is a single-family residence located at 60 North Chamberlain in Terre Haute.
9. The PTABOA determined the total assessment is \$40,100 (land \$11,100 and improvements \$29,000).

10. On the Form 131, the Petitioners requested a total assessment of \$22,000 (land \$2,000 and improvements \$20,000). At the hearing, Mr. Antonini requested the total assessment match the \$30,000 value conclusion in the appraisal.

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

OBJECTIONS

12. Mr. West stated “the Petitioners opted out of small claims, and while that does require an exchange of evidence prior to (the hearing), neither party exchanged evidence.” Because the Petitioners elected to opt out of the Board’s small claims process they were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at the hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f). However, the Board may waive the evidence-sharing requirements for materials that were submitted or made part of the record at the PTABOA hearing. 52 IAC 2-7-1(d).
13. It is not clear if Mr. West meant his statement to be an objection, but to the extent that he did, the Board overrules his objection. The purpose of the evidence exchange requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Mr. West stated the “[Form] 131 filing...does include the appraisal (and) the PTABOA rejected the appraisal.” As the rules state, the

Board *may waive* the evidence-sharing requirements for materials that were *submitted or made part of the record at the PTABOA hearing*. 52 IAC 2-7-1(d) (emphasis added).

The purpose of the evidence exchange requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Mr. West should not have been surprised by the appraisal report because it was presented at the PTABOA hearing and attached to the Form 131. Accordingly, the Petitioners' exhibit is admitted.

PETITIONERS' CONTENTIONS

14. The subject property's assessment is too high. The Respondent erroneously utilized the gross rent multiplier (GRM) to value the property. The GRM method is not an appropriate method for valuing this "very high maintenance property." The property was purchased for "\$3,000 to \$4,000 because it was in really poor shape." To date, sections of the home and garage are "covered with a blue tarp." Maintenance costs would require "30% to 50% of an investor's income." Consequently, this "throws the GRM out of whack." Most importantly, this property was never used as a rental property, it was remodeled and then sold on contract for "somewhere around \$30,000." *Antonini argument; Avenatti testimony.*

15. In an effort to prove the property was over assessed, the Petitioners offered a certified appraisal. The appraisal was prepared by appraisal trainee John Adamson and signed by supervisory appraiser Kyle Shoults. By relying on the sales-comparison approach, Mr. Adamson valued the subject property at \$30,000 as of March 1, 2015. The Petitioners specifically did not request Mr. Adamson to utilize the income approach in preparing his report, and Mr. Adamson stated he did not consider the cost or income approaches because they were "not necessary for credible assignment results." *Avenatti testimony; Pet'rs Ex. 1.*

16. Mr. Avenatti, a licensed appraiser with over 40 years of experience, testified that he believed the appraisal to be an “accurate representation of the property.”¹ He performed a “quick cursory” review to verify Mr. Adamson’s comparable sales through the multiple listing service (MLS). *Avenatti testimony; Pet’rs Ex. 1.*

RESPONDENT’S CONTENTIONS

17. The subject property is correctly assessed. The Respondent requested income information from the Petitioners, but never received it. Thus, the property was valued utilizing the GRM method based on potential rents to value the property. *West argument.*
18. The Petitioners’ appraisal is flawed. The PTABOA rejected the appraisal because the appraiser did not recognize the subject property as an “income-producing property.” The property is an income-producing property “whether the Petitioners sold it or kept it as a rental property.” *West argument (referencing Pet’rs Ex. 1).*

BURDEN OF PROOF

19. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
20. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

¹ As previously referenced, Mr. Avenatti is also “part owner” of the subject property. Mr. Avenatti did not perform the appraisal for this appeal.

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

21. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
22. Here, the Petitioners’ representative initially argued the Respondent had the burden of proof because “the property (sic) increased by more than 5%.” However, after an examination of the evidence, it is clear the total assessment actually decreased from \$66,300 in 2014 to \$40,100 in 2015. The ALJ made a preliminary decision that the burden remains with the Petitioners. The Board adopts this ruling and finds that the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioners.

ANALYSIS

23. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information

regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

24. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
25. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, the Petitioners presented a Uniform Standards of Professional Appraisal Standards (USPAP) compliant appraisal prepared by John Adamson, a certified licensed trainee, and signed by Kyle Shoults, a certified licensed appraiser. Mr. Adamson estimated the value of the property at \$30,000 as of March 1, 2015.
26. In an effort to discredit the Petitioners' appraisal, the Respondent argued the subject property is an "income-producing property" and the appraisal is flawed because it does not consider the income approach to value or a GRM. Indiana Code § 6-1.1-4-39 provides in part that the GRM "is the preferred method for valuing...real property that has at least one (1) and not more than four (4) rental units..." Because the GRM method is described only as the "preferred method," rather than mandatory, the statute contemplates circumstances in which the GRM method should be disregarded. Further, the evidence indicates the property is not an "income-producing property." According to Mr. Avenatti, "this property was never used as a rental property." The Respondent failed to submit any evidence to contradict this statement. Consequently, the question the Board must address is not one of methodology, but whether the Petitioner established that the appraisal's sales-comparison approach results in an accurate market value-in-use for the subject property. As previously stated, the appraisal was prepared in conformity with USPAP and the appraiser has the training and education to make an informed decision as

to which approach to value is appropriate in each situation. Additionally, no argument was made to detract from the credibility of the appraiser's purportedly comparable properties or the adjustments he made in his sales-comparison analysis. According to Mr. Adamson, the cost or income approaches were not considered because they were "not necessary for credible assignment results." Accordingly, based on the appraisal, the Petitioner made a prima facie case that the assessment should be reduced to \$30,000. The Board notes, this determination is based on the appraisal itself and not on the opinion of the Petitioners' witness Mr. Avenatti.

27. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
28. Mr. West offered little in support of the current assessment. He merely argued the Respondent's methodology of using a GRM is the "best" approach for valuing the subject property.
29. As part of making a case, "it is the taxpayer's duty to walk the [Board] through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). This requirement applies equally to an assessor bearing the burden. Here, the record is void of any basis for the Respondent's selection of a GRM or any evidence as to how it was used to compute the assessment. Thus, the Respondent failed to rebut the Petitioners' case.

SUMMARY OF FINAL DETERMINATION

30. The Board finds for the Petitioners and the 2015 assessment must be reduced to \$30,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.